IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 11.02.2019]

[PRONOUNCED ON : 11.04.2019]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.2021 of 2011

Sasikumar ... Appellant/Claimant

.. Vs ..

1. Sudhakar

2. Bajaj Allianz General Insurance Co., Ltd.,
No.25/26, Bilal Prince Towers,
4th Floor,
College Road, Nungambakkam,
Chennai - 6. ... Respondents/Respondents

PRAYER: Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 19.04.2011 made in M.C.O.P.No.327 of 2006 on the file of the Motor Accidents Claims Tribunal (Sub Court), Tirupattur, Vellore District.

For Appellant : Mr.Pa.Sudesh Kumar

For R-1 : No Appearance

For R-2 : Mr.N.Vijayaraghavan

JUDGMENT

The claimant is the appellant herein and he has preferred this appeal challenging the exoneration of the insurance company from its liability.

2. The appellant herein/claim petitioner has preferred the claim petition before the Tribunal alleging that on 20.11.2005 at about 10.00 a.m., he was standing at Thanneerpanthal junction road along with his friends and at that time, a mini door auto bearing Registration No.TN-23/Y-5645 belonging to the first

respondent was driven by its driver in the course of his employment under the first respondent in a very rash and negligent manner towards Tiruvannamalai and caused the accident and the said mini door auto capcized. Due to the impact, the claim petitioner, who was standing on the extreme left side of the road, sustained grievous injury on his right thigh, right side hip and also sustained fracture. The other persons, who were standing near the claim petitioner also sustained grievous injuries. Immediately after the accident, the claim petitioner was taken to Government Hospital at Tirupattur and from there he was taken to Government Vellore Medical College Hospital, Vellore and admitted as an in-patient for some days. Afterwards, the claim petitioner was taken to a private hospital and taken treatment as out patient. By the said accident, the claim petitioner becomes permanently disabled and lost his earning capacity. For the injuries sustained by him, the claimant has filed a claim petition in M.C.O.P.No.327 of 2006 claiming a sum of Rs.2,00,000/- as compensation.

3. The second respondent/insurance company has filed a counter statement before the Tribunal denying and disputing the alleged avocation, age and income of the claim petitioner and also interalia contended that the vehicle bearing Registration No.TN-23-AY-5645 alleged to be insured with the second respondent and caused the accident is a mini door goods vehicle and the said vehicle was used for carrying goods only. As per the FIR, on the date of the accident, the claimant and others were travelled as fare paying passengers. Thus, the first respondent breached the terms and conditions of the policy and violated law. Since there is a gross violation of law and breach of policy conditions, the second respondent/insurance company is not liable to indemnify the first respondent. The second respondent has not collected any additional premium for such unauthorized passengers. Further, Section 147 of the Motor Vehicle Act does not require the insurance company to provide cover for unauthorized passenger. The first respondent (the insured) has permitted one Rubanraj without valid effective licence and endorsement to drive his vehicle. Such act amounts to violation of law and breach of policy conditions and hence, the second respondent/insurance company prays for dismissal of the claim petition.

4. Before the Tribunal, the injured/claimant examined himself as P.W.1, Dr.Elangovan was examined as P.W.2 and one Mr.Pola Gounder, who is an independent witness, was examined as P.W.3 and documents Exs.P.1 to P.11 were marked on the side of the injured/claimant. On behalf of the respondents, two witnesses were examined as R.Ws.1 and 2 and documents Exs.R.1 to R.8 were marked.

5. The Tribunal, based upon the oral evidence of the injured/claimant namely P.W.1 coupled with documentary evidence Ex.P.1-FIR, Ex.R.3-motor vehicle inspector's inspection report and Ex.R.5-Xerox copy of Charge Sheet, has held that the accident has taken place due to the rash and negligent driving of the driver of the first respondent and also held that on the date of the accident, the driver of the mini door auto has possessed only Light Motor Vehicle [LMV] driving license and he does not possess badge endorsement to drive the carrier vehicle. Further, the Tribunal has held that the injured/claimant was travelled as an unauthorized passenger and accordingly, exonerated the insurance company from its liability and awarded a sum of Rs.1,00,000/- towards compensation to be payable by the owner of the vehicle. Aggrieved against the exoneration of the insurance company from its liability, the claimant has preferred this appeal before this Court.

6. On a perusal of the evidence of P.W.1 and also taking note of the contents of Ex.P.1-FIR., Ex.R.3-motor vehicle inspector's inspection report and Ex.R.5-Xerox copy of Charge Sheet, it is seen that the driver of the first respondent vehicle was arrayed as accused in Ex.P.1-FIR and Charge Sheet has been laid against him for the offences under Sections 279, 337 and 338 IPC and based upon the evidence, the Tribunal has rightly come to the conclusion that the accident has taken place due to the rash and negligent driving of the driver of the first respondent.

7. With regard to the quantum of compensation, Ex.P.2 to P.11 were marked. P.W.2-Doctor-Elangovan had issued Ex.P.11-Permanent Disability Certificate. The Tribunal, based upon the oral evidence of P.W.2 and also taking note of the fact that the appellant/claimant suffered bone fracture on the right leg and left hip region, awarded a sum of Rs.74,000/- under the head of injuries sustained by the claimant.

8. Learned counsel appearing for the appellant/claimant relying upon the decision of the Hon'ble Apex Court reported in (2017) 14 Supreme Court Cases 663 [Mukund Dewangan Vs. Oriental Insurance Company Ltd.,], would contend that since the driver of the mini door auto possessed driving license to drive a Light Motor Vehicle, badge endorsement is not necessary and therefore, prayed for ordering of pay and recovery.

9. Per contra, the learned counsel appearing for the second respondent/insurance company would contend that since the

claimant was travelled as an unauthorized passenger, the insurance company cannot be mulcted with its liability and the story projected by the claim petitioner was bound to be in contradiction with Ex.P.1-FIR and the same has been taken note of by the Tribunal. In support of his contention, the learned counsel for the second respondent/insurance company has relied upon the judgment of this Court in C.M.A.Nos.1529 to 1533 of 2015 [Bharati AXA General Insurance Co. Ltd., Vs. Aandi and another].

10. It is seen from the records that immediately after the accident, Ex.P.1-FIR was lodged by none other than P.W.3-Pola Gounder and based upon which, the police have commenced the investigation and also filed Charge Sheet under Ex.R.5. It remains to be stated that as per Ex.P.6, the vehicle in question is a three wheeler mini door auto and the same was insured as per Ex.P.7.

11. At this juncture, it remains to be stated that the insurance company in its counter statement filed before the Tribunal has taken a specific plea that no additional premium has been paid for owner of the goods and as per Ex.P.1-FIR, on the date of the accident, the claimant along with nine others were travelled as fare paying passengers and hence, they are not covered under the policy coverage of Ex.R.2. As per Ex.P.6-Registration Certificate for the auto, the seating capacity of mini door auto bearing Registration No.TN-23/Y-5645 is only five inclusive of driver. However, it is seen from Ex.P.1-FIR, on the date of the accident, the driver namely, the first respondent has carried ten persons namely, [1] Sasikumar [2] Chinnadurai [3] Bolegounder [4] Sampathkumar [5] Veerapadiran [6] Kadirvel [7] Rathinappan [8] Sivalingam [9] Govindaraj and [10] Dhandapani.

12. The policy is only for third party insurance but the first respondent seems to have carried the passengers by collecting fees and the said act of the first respondent is a clear violation of the policy condition. At this juncture, it remains to be stated that P.W.3-Pola Gounder, who is said to have set the criminal law into motion under Ex.P.1, had deposed before the Tribunal that the injured was standing near the tree on the road and the vehicle went and dashed against him. However, P.W.3 appears to be the author of Ex.P.1-FIR wherein, he has categorically stated that along with the injured Sasikumar, nine other persons were travelled and due to the rash and negligent driving of the driver of the first respondent, mini door auto capsized on the edge of the road resulting in the accident.

13. Taking into consideration the document Ex.P.1-FIR and Ex.R.5- Charge Sheet, the Tribunal has given a categorical finding that the evidence of P.W.3 is unbelievable and artificial, in view of the material contradiction as to the manner of the accident and possession of the license at the time of the accident.

14. On re-appreciation of the evidence and also after perusing the contents of Ex.P.1-FIR and Ex.R.5-Charge Sheet, I do not find any error in the said finding rendered by the Tribunal and as such, this Court is of the considered view that in view of the presence of the documentary evidence under Ex.P.1 and R.5 which show the manner of the accident and also the crux of the point viz., the injured/claimant was travelled in the vehicle as a fare paid passenger in fact unauthorized passenger. When such being the case, the finding of the Tribunal in discarding and disbelieving the evidence of P.W.3 cannot be brush aside and accordingly, the said finding of the Tribunal in respect of the nature and character of the claim with regard to the version of P.W.3 is hereby confirmed and the claim was preferred only as an unauthorized occupant after paying the fare to the first respondent and such an act of carrying passenger is violation of the contradictional condition and the insurance company cannot be mulcted with its liability and the similar finding arrived by the Tribunal is hereby confirmed and the quantum as such appears to be reasonable and hence, the finding of the Tribunal with regard to the quantum of compensation and the exoneration of the insurance company from its liability are hereby confirmed. Accordingly, the Civil Miscellaneous Appeal is liable to be dismissed.

15. In the result, the Civil Miscellaneous Appeal is dismissed and the Judgment and decree dated 19.04.2011 passed by the Motor Accidents Claims Tribunal, Sub Court, Tirupattur, Vellore District, in M.C.O.P.No.327 of 2006, is confirmed.

16. If the award amount with accrued interest has not been deposited, the first respondent herein, who is the owner of the mini door auto is directed to deposit the entire award amount along with interest at the rate of 7.5% per annum from the date of claim petition and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.327 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Court, Tirupattur, Vellore District, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount

along with interest and costs, less the amount already withdrawn, if any. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. Sub Court,
Motor Accidents Claims Tribunal,
Tirupattur, Vellore District.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Pa.Sudesh Kumar, Advocate, S.R.No.35600

C.M.A.No.2021 of 2011

GJ(CO)
CS/17/07/2019